

European Commission (Directorate-General Secretariat General, Directorate-General for Environment, Directorate B)

Att: Mr Pascal LEARDINI, Mr Kestutis SADAUSKAS, Ms Sarah NELEN, Ms Bettina LORZ, Ms Karolina ZAZVORKOVA

10 May 2019

Subject: Comments on revised draft substances restriction methodology circulated to RoHS Stakeholder Group on 19 April, and presented at the RoHS Stakeholder meeting on 24 April 2019

Dear authorities involved in the drafting of the RoHS restriction methodology,

We write to you on behalf of several industry associations representing companies involved in different stages of the electronic and electrical equipment (EEE) supply chain, including producers and importers of substances, spare parts, a wide range of EEE, etc. and recycling.

The signatory associations and their members are committed to the protection of health and the environment through the implementation of the RoHS Directive and other EU legislation. We are also committed to seeing such processes address the requirements of Article 6 of the RoHS Directive in a transparent and robust fashion. However, following a meeting of stakeholders on the 24th of April to discuss a revised draft substance restriction methodology developed by the Oeko Institut (which had been circulated only on the 19th of April), we still have some concerns.

From a Better Regulation perspective, we believe that it would be more efficient and coherent to finalise the RoHS restriction methodology as part of the broader RoHS Review, due to start in a few weeks. While the intention of the Commission is to publish the RoHS restriction methodology as guidance only, there remains fundamental issues which must be addressed, as articulated in Annex 1 of this letter. We look forward to receive the Commission's assurance that the forthcoming RoHS Review will include the RoHS restriction methodology, and provide the opportunity to make further changes identified during the Review. Following this logic, we are hereby requesting that the substance assessments are suspended until the methodology has been finalised in full consideration of any relevant conclusions of the RoHS Review, with the involvement and agreement of Member States.

As mentioned in the RoHS Evaluation and Fitness Check Roadmap (REFIT evaluation), "*the evaluation will take place against the background of other relevant Commission initiatives related to circular economy, including concerning the interface between chemical, product and waste legislation*". The proximity between restrictions established under chemical legislation such as REACH, and RoHS, justifies that the RoHS restriction methodology is contemplated within its broader review context. This would furthermore be beneficial to avoid duplication, and potential inconsistencies with possible future initiatives following the RoHS REFIT evaluation.

We remain available for any questions or comments you may have, and look forward to hearing from you as soon as possible.

Sincerely,

- *Roger Coelho*, Policy Director, American Chamber of Commerce to the EU (AmCham EU)
- *Paolo Falcioni*, Director General, Home Appliance Europe (APPLiA)
- *Kevin Bradley*, Secretary General, International Bromine Council (BSEF)
- *Maggie Saykali*, Director Plastics Additives & Resins, European Chemical Industry Council (Cefic)
- *Dr Simon Cook*, Vice President – Global Regulation, Cobalt Institute
- *Xavier Ibled*, President, European Domestic Glass (EDG)
- *Chris Slijkhuis*, Board Member and Senior Advisor, European Electronics Recyclers Association (EERA)
- *Thomas Hunlich*, President, European Special Glass Association (ESGA)
- *Geoffroy Tillieux*, Director of the Technical Department, European Plastics Converters (EuPC)
- *Emmanuel Katrakis*, Secretary-General, Secretary General, European Recycling Industries' Confederation (EuRIC)
- *Violaine Verougstraete*, EHS Director, Non-Ferrous Metals Association (Eurometaux)
- *Caroline Braibant*, Secretary-General, International Antimony Association (i2a)
- *Eva Model*, General Manager, Minor Metals Trade Association (MMTA)
- *Veronique Steukers*, Director Health & Environment, Public Policy, Nickel Institute
- *Leonor Garcia*, Director Public Affairs, PlasticsEurope
- *Meglana Mihova*, Test & Measurement Coalition

- 1. The next version of the methodology should not include any reference to specific chemicals to illustrate a given step of the methodology.** One reference to a specific example remains in Table 3-4 (“(e.g. all congeners of polybrominated diphenyl ethers (PBDE)”) and should be removed. Related to this point, the reference to UVCBs in sections II.I.I and 2. is incorrect. UVCBs are not good examples for the “*simultaneous presence of substances*” or combined exposure. In UVCBs, the constituents have reacted together to form a specific new substance, with its own properties. These two references should be removed.
- 2. The next version of the methodology must clarify that the manufacture of substances is not covered by RoHS.** We request that this point is clarified in the next version of the methodology since only the use (i.e. presence) of the substance in EEE is covered by RoHS.
- 3. The next version of the methodology must clarify that only substances used (i.e. present) in EEE can be restricted.** This is essential to avoid confusion as well as for consistency with the legislation, as the RoHS Directive and the RoHS restriction (i.e. maximum concentration values) concern the placing on the market of EEE (Art. 4) and not the manufacturing process. If a substance is not present in EEE, it is not relevant for RoHS restriction. We request that the updated methodology clarifies this important aspect, and that it also foresees that, once all relevant information has been collected to identify the actual substance that will be present in the final EEE, the precursor or intermediate chemicals originally listed in the RoHS Inventory are removed from the Inventory.
- 4. The next version of the methodology should include PACT as a source of information.** ECHA’s public activities coordination tool (PACT) provides an overview of the substance-specific activities that authorities are working on under REACH and the CLP Regulation. A RoHS assessment may benefit from data generation and assessment, regulatory management option analysis and regulatory risk management plans regarding substances which may have one or more known uses in EEE.
- 5. The next version of the methodology must correct the description made of CoRAP and the SIN List. These two instruments should not be put on the same level and should not be referred to as equally reliable and comparable.** If a substance is on ECHA’s Community Rolling Action Plan (CoRAP), it means that a Member State has evaluated or will evaluate it over the coming years. CoRAP is therefore not a list of substances suspected of being hazardous. This should be corrected in the next version of the methodology (which is currently described as a list of substances “*to be specified as “suspected” of having respective properties, unless the properties are also identified in international and/or EU legislation*”). The SIN List is a list of chemicals “*likely to be banned or restricted in the future*”, identified based on an assessment performed by two individuals (Professor Martin Scheringer and Dr Carla Aparecida, ETH Zürich). Such a list is of equal value to any list compiled by Industry or a third party, and is not to be given the same weight as CoRAP, which is adopted by ECHA, in close cooperation with Member States. We therefore request that the reference to the SIN List (and any other List not resulting from a formal and validated scientific and/or regulatory procedure) is removed from the next version of the methodology.
- 6. The next version of the methodology should also consider tools that can estimate metal-specific exposures and emissions.** Generic tools will predict exposure and emission based on criteria and parameters that are often not relevant for metals. A number of tools have been identified by the metals and inorganics sectors as being able to more accurately estimate

exposure to, and emissions of, metals from the manufacture, processing and downstream uses of the metal (compounds) in the EU. As regards environmental emissions, metal-specific Emission Release Categories or spERCs for metals have been developed to estimate emissions of metals to water and air (<https://www.arche-consulting.be/tools/spercs-tool-for-metals-2/>). The spERCs aim to replace ECHA's default release factors which often lead to significant over-prediction of releases, over-predicted environmental exposure concentrations and risks, and an inefficient management of releases and risk. For the estimation of inhalation and dermal exposures, a number of tools are available and are summarised in Annex 2.

7. **The next version of the methodology should include a complete reference to BUWAL 2004.** This is the reference provided for a number of transfer factors and concentrations of metals in WEEE, in particular for various metals. Industry would like to check these factors and possibly provide more recent information (several waste exposure assessments have been performed under REACH and have allowed to collect more recent information).
8. **The next version of the methodology must clarify that the impact of a restriction on the end-of-life treatment and recycling of products has to be fully considered.** Waste sorting practices are influenced by, and sometimes defined around, specific chemicals contained in the waste which provide e.g. a given density on the basis of which waste can be sorted out and recycled safely, or a chemical affinity enabling to 'capture' certain chemicals for further processing. Substitutes that may appear to be safer can in some cases prevent efficient sorting and recycling, which would be incompatible with circularity, resource efficiency and sustainability principles. The chemical affinity between certain substances, in particular metals, maximises the recycling potential and needs to be considered in any restriction assessment. Changes to the recycling feed may affect the efficiency of the recovery of certain metals which will be 'carried and extracted' by metals such as lead (Pb), or 'trapped' in non-recyclable (because indissociable) alloys or mixtures.
9. **The next version of the methodology should take into account and must include references to workplace legislation such as, but not limited to, the carcinogens and mutagens directive, or the chemical agents directive.** Workplace legislation has already addressed many chemicals for which EU Occupational Exposure Limit values (OELs) have been adopted or are in the process of being established. This information must be considered in any RoHS restriction assessment.
10. **The next version of the methodology must clarify that exposure and the risk occurring during improper, illegal or unpredictable use or practices cannot constitute on its own, a sufficient reason to restrict a substance.** We request that this is made clear in the next version of the methodology.
11. **The next version of the methodology must foresee a thorough socio-economic analysis which goes beyond a mere assessment of the cost of the restriction vs the cost of the determined impact.** It must consider the technical and economic feasibility of the restriction, in light of the (non-)existing substitutes (and their own technical and economic feasibility), as well as the exemptions which will be triggered. As indicated during the meeting, the fact that 'exemptions' could be granted should not justify restriction decisions. Economic and technical feasibility should be considered from all angles, beyond the basic cost-benefit analysis which is foreseen in the current draft methodology.
12. **The next version of the methodology should specify the steps that foresee a stakeholder consultation and the scope of the consultation (i.e. the information that will be specifically**

called for). This will promote clarity on the role of stakeholders and the importance of preparing and submitting the relevant information in due course. Ideally, it would be important to clarify the minimum or maximum length of the consultation, as well as to alert stakeholders on the need for early preparation and generation/collection of evidence. In many cases, the information will need more time to generate and collect than the time allowed by the consultation.

Annex 2 – Table 1. Exposure/emission estimation tools suitable for metals and inorganic substances

Exposure estimation tools suitable for metals and inorganic substances	Link	Modelling inhalation exposure	Modelling dermal exposure	Comment
MEASE (version 1.02.01)	https://www.ebrc.de/tools/downloads.php	x	x	Specific combinations of PROCs and physical forms are out of scope, e.g. combination of PROC 21 and physical form "Solid, high dustiness". A warning is given in these cases in the tool. PROC28 is in MEASE 2
MEASE 2 (version 2.00.00)	https://www.ebrc.de/tools/downloads.php	x	x	-
Advanced Reach Tool (ART) 1.5	https://www.advancedreachtool.com/	x	-	Due to a lack of suitable calibration data, ART cannot (for the time being) be used for the assessment of fumes, fibres, gases, and dust resulting from emissions during hot metallurgical processes.
Stoffenmanager version 8.0	https://stoffenmanager.com/	x	-	Various PROCs are out of scope from our experience (e.g. 6, 21). Free and commercial version available
ECETOC TRA 3.1	http://www.ecetoc.org/tools/targeted-risk-assessment-tra/	x	x	Since the TRA tool aims at a very broad applicability, the tool fails to reflect some of the specific needs for metals and inorganic substances. For example "massive objects" and "non-volatile solutions" are not reflected. Regarding ECHA R. 14: "The TRA does not cover certain PROCs, specifically PROC 25; PROC 27a and PROC 27b.
ECETOC TRA 3.0	Implemented in CHESAR	x	x	-

Exposure estimation tools suitable for metals and inorganic substances	Link	Modelling inhalation exposure	Modelling dermal exposure	Comment
EMKG-EXPO-TOOL 2.0	https://www.baua.de/DE/Themen/Arbeitsgestaltung-im-Betrieb/Gefahrstoffe/REACH-Bewertungsstelle-Arbeitsschutz/EMKG-Expo-Tool.html	x	-	<p>The tool is currently not appropriate for special situations, including activities where dusts are formed through abrasive techniques, open spray applications, gases, and pesticides. Operations that give rise to the generation of fumes (soldering, welding) and wood dusts are exempted as well. The tool is also not suited for CMR substances.</p>